

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOSE LUIS CARLOS MARTINEZ,

Applicant,

vs.

Civil No. 07-152 WJ/RHS

STANLEY MOYA, Warden, et al.,

Respondents.

**ORDER ADOPTING MAGISTRATE JUDGE’S PROPOSED FINDINGS,
DENYING MOTION TO DISMISS AND TRANSFERRING THIS PROCEEDING**

THIS MATTER comes before the Court on consideration of “Respondents’ Motion to Dismiss Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2244 as a Second or Successive Petition” (“Motion to Dismiss”), filed March 26, 2007 [**Doc. No. 8**] and the proposed findings and recommended disposition (“PFRD”) of the United States Magistrate Judge, filed March 26, 2008 [**Doc. No. 15**]. Respondents do not object to the Magistrate Judge’s PFRD. Petitioner Martinez, proceeding *pro se*, filed a “Motion to File Response to the Court Order” on April 8, 2008 [**Doc. No. 16**], which the Court construes as Petitioner’s objections.

Having considered the Magistrate Judge’s PFRD and the parties’ submittals, the Court finds that Petitioner does not object to any specific finding or recommendation contained in the PFRD. Accordingly, the Court concludes that the Magistrate Judge’s proposed findings will be adopted, Respondents’ Motion to Dismiss will be denied and this case will be transferred as a second or successive application.

WHEREFORE,

IT IS ORDERED that the proposed findings of the United States Magistrate Judge [**Doc.**

No. 15] are adopted.

IT IS FURTHER ORDERED that “Respondents’ Motion to Dismiss Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2244 as a Second or Successive Petition” [**Doc. No. 8**] is **denied**.

IT IS FURTHER ORDERED that the Clerk of Court shall transfer this civil proceeding to the United States Court of Appeals for the Tenth Circuit for consideration as a second or successive § 2254 application pursuant to 28 U.S.C. § 1631.

IT IS FINALLY ORDERED that any pending motions are **denied** as moot.



UNITED STATES DISTRICT JUDGE